

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3660

Report Summary

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Mary Ann Grilli and Hon. Michael Nash, Co-chairs
George Nielsen, 415-865-7670, and Ruth McCreight, 415-865-7666

DATE: March 30, 2000

SUBJECT: New Forms for Interstate Child Support Actions: *Judgment Regarding Parental Obligations (UIFSA)* (Form 1298.58) and *Ex Parte Application for Transfer and Order (UIFSA)* (Form 1298.60) (Action Required)

Issue Statement

Currently there are no Judicial Council forms specifically designed for transferring cases under the Uniform Interstate Family Support Act (UIFSA) to the proper county or for obtaining judgments under UIFSA, as contemplated in the newly enacted Family Code sections 5001 and 5002.¹

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2000, adopt the following new, mandatory forms:

1. *Judgment Regarding Parental Obligations (UIFSA)* (Form 1298.58), providing a form for judgments obtained under UIFSA. The form is attached at page 3.
2. *Ex Parte Application for Transfer and Order (UIFSA)* (Form 1298.60), providing a form for the transfer of UIFSA cases to the proper county. The form is attached at page 5.

Rationale for Recommendation

Two sections were added to the Family Code by Statutes 1999, chapter 980 (Assem. Bill 1671) to improve the processing of interstate support cases under the Uniform Interstate Family Support Act (UIFSA). Family Code section 5001 sets forth criteria for transferring cases to the appropriate county based on an ex parte application. The *Ex Parte Application for Transfer and Order (UIFSA)* (Form 1298.60) would provide a standard form for this procedure.

¹ Attached at page 17.

Family Code section 5002 states that the respondent in a UIFSA case may be served with a proposed judgment consistent with the relief requested in the UIFSA petition. The *Judgment Regarding Parental Obligations (UIFSA)* (Form 1298.58) would be the required form for obtaining such a judgment. The statute further provides that if the respondent does not file a response with the court within 30 days of being served, the proposed judgment would become the court's judgment. This procedure is designed to be similar to that set forth in Family Code section 17430 for in-state actions initiated by a local child support agency.

Alternative Actions Considered

Because there are no existing forms to accomplish what is contemplated by Family Code sections 5001 and 5002, no other alternative actions were considered.

Comments From Interested Parties

The forms were circulated for comment December 23, 1999, as W00-14. In addition to the standard mailing list used for soliciting comments, the proposal was sent to all family law facilitators, child support commissioners, district attorney family support divisions, and the Department of Social Services, as well as to the numerous attorneys and organizations with a focus in family law throughout the state. Responses were received from 26 commentators, all of whom agreed that the forms are needed. The comments were mainly suggestions to improve the format and clarity of the forms.

Staff analyzed all of the comments and made recommendations, which were considered by the Family and Juvenile Law Advisory Committee.²

Implementation Requirements and Costs

Following established procedures, camera-ready copies of the forms will be delivered to the courts and to commercial Judicial Council forms publishers. The courts will make copies available to the public. In addition copies of the forms will be posted to the California Courts Web site. There are no costs additional to the normal costs courts incur in providing forms.

The text of the proposed forms is attached at pages 3–6.

² A comprehensive chart summarizing the comments and the committee's response thereto is attached, beginning at page 7.

Comments for

New Forms for Interstate Child Support Actions: *Judgment Regarding Parental Obligations (UIFSA)* (Form 1298.58)
and *Ex Parte Application for Transfer and Order (UIFSA)* (Form 1298.60)

	Commentator	Position	Comment on Behalf of Group	Comments	Committee Response
1.	Phrasel L. Shelton Rules Committee Chair San Mateo County Superior Court	A	Y	a) Agree.	
2.	David Jetton Court Manager Los Angeles County Superior Court	A		a) Agree.	
3.	Terrie Jarrett Legal Process Clerk II Calaveras County Superior Court	A		a) Agree.	
4.	Norma Castellanos-Perez Commissioner Tulare County Superior Court	A		a) Agree.	
5.	Carla Khal Facilitator Tulare County Superior Court	A		a) Agree.	
6.	Shelly Simonin Legal Secretary Legal Services of Northern California	AM		<p>a) What happened to the appropriate Change of Venue for interstate transfers?</p> <p>b) Why does #1 on the Ex Parte Application not mention Attorney of Record? Otherwise, this is much better than the lengthy Change of Venue.</p>	<p>a) Family Code section 5001 specifies that a transfer is the appropriate way to change the case to the proper county.</p> <p>b) The attorney is specified in the caption, and the declaration could be signed by someone other than an attorney.</p>

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7.	Laura Masunaga Commissioner Siskiyou County Superior Court	A		a) Agree.	
8.	Judith E. Harding Chair Family Law Section-BASF		Y	a) Suggest printing paragraph 1a in bold so that there is no confusion about the notice intended to be given at paragraph 1a. b) Suggest that an additional form be generated similar to a Summons, where the recipient is duly warned that the proposed judgment will become a final judgment and legally binding within 30 days of service. The proposed Summons was not provided. It is possible that the Summons sufficiently serves this purpose.	a) Agree. b) The <i>Summons</i> (Form 1298.50) was adopted July 1, 1999 and contains warnings.
9.	Deborah DeMarchi Facilitator Mendocino County Superior Court	A		a) Agree.	
10.	Cathie Rouse Superior Court Clerk II San Luis Obispo County Superior Court	A		a) Agree.	
11.	Robert Krotzer Family Law Manager San Diego County Superior Court	A		a) Agree.	
12.	Deborah Mullin Family Law Facilitator Santa Barbara County Superior Court	AM		a) In Judgment, paragraph 6a, suggest replacing the word “respondent” to “obligor” b) Form 1298.60 1) Suggest adding more spaces in the party name and address at top of the Ex Parte Application.	a) Disagree. There could be a situation where the petitioner is the obligor. b) 1) Agree.

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				2) Suggest increasing the space for the County in item 1a. 3) Suggest reducing margin at bottom of page. 4) Suggest deleting “1” before words “attorney or party without attorney” at top of page.	2) Agree. 3) Agree. 4) Agree.
13.	John Chemeleski Commissioner Los Angeles County Bar Association, Family Law Section	N	Y	a) Form 1298.58, <i>Judgment Regarding Parental Obligations</i> 1) The options under paragraph 1 may be unduly confusing to anyone receiving a copy after the proceedings due to the higher risk of the form being incorrectly completed. For example, if box 1a is checked and there is a signature of a judicial officer at the end, is it a judgment? 2) What if both boxes were checked or if both were not checked and there was a signature? Although mistakes can be made in any judgment form, it is usually not a question as to whether the document is or is not a judgment, as the code does not appear to require that the proposed judgment on the same form as the judgment 3) Would it be less confusing to have a separate form with “proposed” before the title and the footer and without a signature line? 4) If not two forms, would a separate information sheet or cover sheet containing the information in paragraph 1a and notice that the proposed judgment will be effective when signed by the court be sufficient and less confusing? 5) There should be more space for paragraph 5.	a) 1) Disagree. This has not been a practical problem in in-state cases filed by the local child support agency. This form mirrors the proposed judgment used in those cases (Form 1299.13). 2) Disagree. See 1). 3) Disagree. See 1). 4) Disagree. See 1). 5) Agree, but there may be a space

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					problem.
14.	Christine Copeland Family Law Facilitator Santa Cruz County Superior Court	A		a) Agree.	
15.	Cathy Scoggin Court clerk Yolo County Superior Court			a) Are judgments going to be attached to OSC's or like the attachments to be S&C's (proposed judgments)? b) Clerks concern is length of processing documents – transfer is concerning the court file or FSD file?	a) Family Code section 5002 provides for service of the proposed judgment with OSC's and Summons. b) The transfer is of the court file.
16.	Keri Griffith Court Program Manager Ventura County Superior Court	AM		a) Form 1298.58. 1) Caption box, add “or Attorney or Party Without Attorney” after Governmental Agency. 2) Page 6, Short title box needs to be consistent with front of form. 3) Suggest changing the language in Notice of Transfer Box to read: “You are notified that all pleadings, orders and other documents filed in this case were transferred to County Superior Court on _____.”	a) 1) Disagree. Family Code section 5002 only allows a proposed judgment in cases brought by the governmental agency. 2) Agree. 3) Disagree. It would be difficult to determine when the transfer actually took place.
17.	Gay Conroy Family Law Facilitator Ventura County Superior Court	A		a) Agree.	
18.	Michael T. Sciorra Chairperson California Family Support Council Forms Committee	AM		a) Form 1298.58 1) Change the Family Code citation from 5200 to 5002. Also, see comments made and submitted on behalf of the Los Angeles County District Attorney, Bureau of Family Support	a) 1) Agree with changing the code reference.

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				<p>Operations.</p> <p>b) Form 1298.60</p> <p>1) The following changes are necessary because, in UIFSA cases, geographically districts and jurisdictions may not employ the same titles as those in California. Additionally, changing “County local child support agency” to “local child support agencies of the transferring and receiving jurisdictions” clarifies the intent of the form.</p> <p>2) Item 4: Change to: “...(specify name of county of residence).”</p> <p>3) Item 5: Change to: “...documents in the case file, to the (specify tribunal) _____.</p> <p>4) ORDER: Change to: IT IS ORDERED that ...to the tribunal specified in Item 5 without...</p> <p>5) IT IS FURTHER ORDERED that ...and the local child support agencies of the transferring and receiving jurisdictions where and when the transferred documents were sent.</p> <p>6) NOTICE OF TRANSFER: ...have been transferred to the (specify tribunal) _____.</p> <p>7) CLERK’S CERTIFICATE OF MAILING ...California central registry and the _____ local child support agencies of the transferring and receiving jurisdictions by first-class mail.</p>	<p>b)</p> <p>1) Agree.</p> <p>2) Agree.</p> <p>3) Agree.</p> <p>4) Agree.</p> <p>5) Agree.</p> <p>6) Agree.</p> <p>7) Agree.</p>
19.	Michael T. Sciorra Deputy District Attorney Bureau of Family Support Operations	AM	Y	<p>a) Form 1299.13, <i>Governmental Judgment</i></p> <p>1) Requests re-label to include UIFSA to avoid the large cost of coding a separate automated process for UIFSA establishment. The</p>	<p>a)</p> <p>1) Disagree. The form is designed to comply with Family Code section 5002 and is specific to processing</p>

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				proposed form is otherwise identical to 1299.13.	UIFSA cases.
20.	Tressa S. Kentner Court Executive Officer San Bernardino County Superior Court	A		a) Agree.	
21.	Joe Fabrizio Los Angeles County Superior Court	AM	Y	a) The portion of the <i>Ex Parte Application for Transfer and Order</i> form regarding the clerk's certificate of mailing does not provide for the specific inclusion of the names and addresses of the parties to whom the document is being mailed. Would normally include this to maintain a record should an issue later arise as to the propriety of the mailing. Recommend the form be revised to include this feature. Otherwise, the forms presently appear acceptable.	a) Disagree. This would possibly disclose addresses that are confidential.
22.	Merry Mayes Court Services Coordinator Stanislaus County Superior Court			a) Does this need a Notice of Entry of judgment? 1) #6f – Earning Assignment Order? 2) Should be “order/ notice to withholding”, a federal child support form. 3) Will the “Answer” (s/c) be revised to change “District Attorney” to “Child Support Agency”?	a) The statute does not require one, but Form 1299.16 could be used. 1) Disagree. Family Code section 5208 provides that the “order/notice” is the form used for an earnings assignment order. 2) See 1). 3) Will be considered in a future cycle.
23.	Walter D. Posey Commissioner Rules and Forms Committee	A	Y	a) <i>Judgment Regarding Parental Obligations (UIFSA)</i> 1) Item 1a, line 5: Delete the following sentence, “The Family Law Facilitator will help you fill out the form.”	a) 1) Disagree. Family Code section 10004 specified that family law facilitators are to provide

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					assistance in filling out forms.
24.	Cynthia Denenholz Court Commissioner Sonoma County Superior Court	AM		a) Form 1298.58 1) Item 2(a): The correct code section is 5002. b) Rule 1298.60 1) Item 1a: Add “petitioner” after “respondent” 2) Add a box in number 3 to read: “The petitioner does not reside in this county.” 3) Add a box in number 4 to read: “The petitioner currently resides in the county of (specify name of county):_____” 4) In ORDER: delete “county” and add “of both this county and the receiving county,” after “child support agency” 5) On page 2, #6, add “agencies” after “agency”	a) 1) Agree. b) 1) Agree 2) Agree 3) Agree 4) Agree. 5) Agree.
25.	Robert L. Waring Legislative Counsel California Judges Association	AM		a) Form 1298.58 1) Number 6a should state whether the paternity judgement is based upon a voluntary declaration or by other evidence. Concerned that there be an evidence requirement, whether by stipulation of the parties; results of paternity testing, etc. 2) Number 6c should include a space for the court to set existing arrearages, or language stating that, “Support commences on___ and is due for the months of X-Y with credit to be given to the obligor for amounts actually paid to the obligee on account of support during that period. The (Agency) is to calculate the amount of support. The obligor has until___ to present the agency with proof of amounts to be credited against support. Any arrearage is to	a) 1) Disagree. The respondent will receive notice that the proposed judgment will become effective if there is no response within 30 days of service. 2) Disagree. This form mirrors the proposed judgment used in in-state cases filed by the local child support agency. Any substantial changes will be considered for both forms in a future cycle.

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				<p>be paid at the rate of \$y per month in addition to the support order until paid in full.”</p> <p>3) Suggests adding this phrase as optional if legislatively allowed, “If the entirety of the support order and the arrearage is paid each month, no interest or penalties will accrue. If any payment is missed interest and penalties will begin accruing as to that and late payments.” The purpose of the above language is to avoid the creation of automatic arrearages whenever a retroactive order is made which at the same time provides no way for the parent to dig their way out of the hole. This should be an optional and not a mandatory order. There are some cases where this is not a good order-but many more where it would be fair.</p> <p>4) Number 6g should add language stating that, “Each parent will pay ½ of all uncovered medical expenses, including but not limited to medical, dental, orthodontic, optical and counseling expenses.”</p> <p>b) Form 1298.60</p> <p>1) Number 2a-c – with respect to the Ex Parte Application, numbers “2b” should include a requirement that the applicant provide a statement that neither parent resides in the particular county. This assumes that the intent is to use this when both parents have moved, but the form does not make this point clear. If UIFSA requires the parent seeking transfer to a</p>	<p>3) Disagree. Interest is a constitutional component of a money judgment.</p> <p>4) Disagree. This may be considered in a future cycle to keep this form consistent with the other proposed judgment (Form 1299.13).</p> <p>b)</p> <p>1) Disagree. Family Code section 5001(c) & (c) only deals with situation where the respondent is not in the county where the petition or registration was filed.</p>

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				<p>new forum to file in the county of the other parent's residence, already have an order in our county and already have jurisdiction.</p> <p>2) Number 2b refers to transfer of jurisdiction, not just declining to take jurisdiction as suggested in 2a and 2c. Questions why an agency should force a custodial parent residing in one county to deal with the court of another county just because the respondent resides there. Concerned that a respondent could move from county to county and prevent any type of court enforcement or judgment.</p> <p>3) Page 2: This page should include a clearly marked space showing the addresses to which the notices were sent to each parent by the clerk and should constitute a form of a proof of service.</p>	<p>2) Disagree. Family Code section 5001(c) provides that, upon application, a case where there is an order must be transferred when the respondent is not a resident in the county.</p> <p>3) Disagree. This would possibly disclose addresses that are confidential.</p>
26.	Kristy Johnson Child Support Statewide Systems Bureau			<p>a) Form 1298.58</p> <p>1) Change the Family Code citation in the bottom right corner from "5200" to "5002".</p> <p>b) Form 1298.60</p> <p>1) The following changes are necessary because in UIFSA cases, geographical districts and jurisdictional authorities may not use the same names as those California. Also, changing "county local child support agency" to "transferring and receiving jurisdictions" clarifies the intent of the form.</p> <p>2) Item 4: The respondent currently resides in the county of (specify name of county residence)."</p>	<p>a)</p> <p>1) Agree.</p> <p>b)</p> <p>1) Agree.</p> <p>2) Agree.</p>

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				<p>3) Item 5:... and other documents in the case file, to the _____ County Superior Court (specify tribunal):</p> <p>4) ORDER: IT IS SO ORDERED That the clerk of the court transfer this Order and all other documents filed in this case, including all pleadings and order, to the _____ County Superior Court tribunal specified in paragraph 5, without payment of any fee.</p> <p>5) IT IS FURTHER ORDERED that the clerk notify the petitioner, the respondent, the California Central Registry, and the _____ county local child support agency of the <u>transferring and receiving jurisdictions</u> where and when the transferred documents were sent action was transferred.</p> <p>6) NOTICE OF TRANSFER:...have been transferred to the _____ County Superior Court tribunal specified in paragraph 5.</p> <p>7) CLERK'S CERTIFICATE OF MAILING:...the California Central Registry, and the _____ county local child support agency of the <u>transferring and receiving jurisdictions</u> by first class mail.</p>	<p>3) Agree.</p> <p>4) Agree.</p> <p>5) Agree.</p> <p>6) Agree.</p> <p>7) Agree.</p>